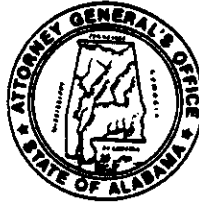


# OFFICE OF THE ATTORNEY GENERAL

82-00198



CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

FEB 16 1982

ADMINISTRATIVE BUILDING  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 834-5150

JAMES R. SOLOMON, JR.  
DEPUTY ATTORNEY GENERAL  
WILLIAM M. BEKURS, JR.  
EXECUTIVE ASSISTANT  
WALTER S. TURNER  
CHIEF ASSISTANT ATTORNEY GENERAL  
JANIE NOBLES  
ADMINISTRATIVE ASSISTANT

Honorable George A. Monk  
City Attorney  
City of Anniston  
P.O. Box 580  
Anniston, AL 36202

Municipalities -- Referendums --  
Funds

City of Anniston may not  
allocate and spend funds in  
order to hold a non-binding  
city-wide referendum on the  
question of a 1% increase in  
sales tax.

Opinion by Assistant Attorney  
Smith

Dear Mr. Monk:

The opinion request of the City of Anniston has  
been received in the Office of the Attorney General.  
The question presented is:

May the City of Anniston lawfully  
expend municipal funds for the  
costs and expenses incurred in con-  
ducting a non-binding City-wide  
referendum on the question of a 1%  
sales tax increase?

Honorable George A. Monk  
Page Two

Your question is answered in the negative.

In an Opinion to Honorable Wade H. Baxley, City Attorney of Dothan under date of May 8, 1980, copy enclosed, this office held that the City of Dothan could not allocate and spend funds in order to hold a city-wide referendum on whether to adopt a dog leash law. In that opinion it was noted that there was no legislation applicable in the City of Dothan authorizing the expenditure of funds for such a referendum. This office is likewise unaware of any statute which permits such an expenditure by the City Council of Anniston.

In the Opinion to Mr. Baxley this office stated:

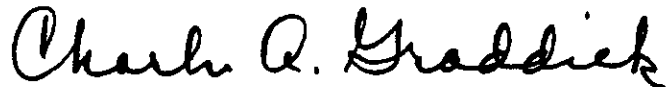
Under Section 11 of Act No. 79-537 the affirmative vote of three members of the Board of Commissioners is necessary for the passage of any resolution, by-laws or ordinance. The Board of Commissioners should be responsive, insofar as possible, to the needs and desires of those who elect them and this may be done in providing for public input at meetings of the Board of Commissioners, but the legislature has not seen fit to authorize the shifting of this obligation to the voters and thus expenditure of funds for a referendum is not proper.

The same principle is applicable to actions of the City Council of Anniston. It is, therefore, the opinion of this office that the City Council of Anniston cannot legally allocate and spend public funds to hold a city-wide referendum on the question of a 1% sales tax increase.

Honorable George A. Monk  
Page Three

I do hope that this response sufficiently answers your inquiry. If, however, we may be of further service, please do not hesitate to contact us.

Sincerely yours,

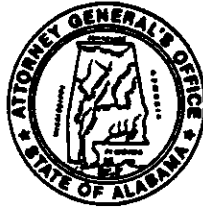
A handwritten signature in cursive script that reads "Charles A. Graddick". The signature is written in dark ink and is positioned above the printed name.

CHARLES A. GRADDICK  
Attorney General

CAG:es

Enclosure

# OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

MAY 8 1980

ADMINISTRATIVE BUILDING  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36138  
AREA (205) 834-5180

LEE L. HALE  
DEPUTY ATTORNEY GENERAL  
WILLIAM M. BEKURS, JR.  
EXECUTIVE ASSISTANT  
WALTER S. TURNER  
CHIEF ASSISTANT ATTORNEY GENERAL  
JANIE NOBLES  
ADMINISTRATIVE ASSISTANT

Honorable Wade H. Baxley  
City Attorney  
The City of Dothan  
P. O. Box 2128  
Dothan, AL 36302

Municipalities — Funds —  
Elections — City of Dothan

City of Dothan may not allocate and  
spend funds in order to hold a city-  
wide referendum on whether to adopt  
a dog leash law.

Dear Mr. Baxley:

This office has received the opinion request of the City  
of Dothan which presents the following question:

- (1) Can the Board of Commissioners of the  
City of Dothan, Alabama, a municipal  
corporation, legally allocate and spend  
public funds to hold a city-wide refer-  
endum to decide whether or not the said  
public is in favor of the board adopting  
a dog leash law?

Act No. 2141, Acts of Alabama 1971, p. 3431, as amended  
by Act No. 79-537, Acts of Alabama 1979, p. 959 serves as the  
charter for the City of Dothan. Your request notes that there  
is no provision for initiative and referendum with regard to  
the passage of municipal ordinances contained in these acts.

Hon. Wade H. Baxley  
Page 2

Your request states and this office agrees that Code of Alabama 1975, § 11-44-105 is inapplicable to the government of the City of Dothan. Shew v. City of Gadsden, 265 Ala. 253, 90 So.2d 768 (1956).

Under Section 11 of Act No. 79-537 the affirmative vote of three members of the Board of Commissioners is necessary for the passage of any resolution, by-laws or ordinance. The Board of Commissioners should be responsive, insofar as possible, to the needs and desires of those who elect them and this may be done in providing for public input at meetings of the Board of Commissioners, but the legislature has not seen fit to authorize the shifting of this obligation to the voters and thus expenditure of funds for a referendum is not proper. Therefore, it is the opinion of this office that the Board of Commissioners of the City of Dothan cannot legally allocate and spend public funds to hold a city-wide referendum to decide whether or not the public is in favor of the Board adopting a dog leash law.

I do hope this response satisfactorily answers your question. If, however, we may be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK  
ATTORNEY GENERAL

By-



CAROL JEAN SMITH  
ASSISTANT ATTORNEY GENERAL

CJS:ln